



Website Accessibility Under the ADA

The Americans with Disabilities Act (ADA) has been law for over twenty years. The ADA prohibits private entities from discriminating on the basis of disability in places of public accommodation. Places of public accommodation include restaurants, hotels, museums and other venues available to "the public." For associations, the ADA has traditionally been a consideration for meetings. Both the facility at which an event is held and the organization that leases or obtains space for a meeting are considered "public accommodations" under the ADA, and both are jointly responsible for complying with the ADA.

In practical terms, accessibility requires that places of public accommodation make reasonable accommodations for participants with disabilities. Reasonable accommodation requires providing physical access and auxiliary aids that are reasonably necessary to provide "equal enjoyment" of goods, services, or facilities, without placing an undue burden on the organization. The organization should consider a participant's requested accommodation, but isn't bound by it when other reasonable alternatives - including those that may be less expensive - are available. In any event, the organization cannot pass the cost of the accommodation on to the disabled individual.

When the ADA was enacted, the Internet as we know it today did not exist. Given the critical role that the Internet plays in the daily personal and professional lives of individuals across the world, however, accessibility of websites is gaining more attention. Some countries (including the U.S. and Canada) require federal government websites to be accessible to persons with disabilities (including visual, hearing and motor skill impairments).

U.S. law does not require websites to be accessible. However, the U.S. Department of Justice (DOJ) recently issued an Advance Notice of Proposed Rulemaking (ANPRM) and held hearings requesting public comments

on its intent to consider proposing revised ADA regulations on website accessibility for state and local governments and places of public accommodation.

Specifically, with respect to private entities, the DOJ is considering revising the regulations implementing Title III of the ADA in order to establish requirements for making the goods, services, facilities, privileges, accommodations, or advantages offered by public accommodations via websites accessible to individuals with disabilities. While "places of public accommodation" has traditionally been defined as brick-and-mortar structures, the ANRPM recognizes that increasingly, private entities are providing goods and services to the public through websites "that operate as places of public accommodation" under Title III. Under such an approach, associations ultimately could be required to make reasonable accommodations to their websites for individuals with disabilities to allow them to participate in web-based events and obtain goods or services via the Internet.

The ANPRM requests comments on all aspects of potential new rules for website accessibility, including: what standards, if any, the DOJ should adopt for website accessibility; whether coverage for certain entities, such as small businesses, should be limited; what resources are available to make existing websites accessible; and what are the costs for, and any alternatives to, requiring website accessibility by places of public accommodation. The ANPRM, hearing transcripts (including rebroadcasts) and other information may be found at the following link:

<http://www.ada.gov/anprm2010/anprm2010.htm>.

Although there is no set timetable for publication of a possible proposed rule, organizations may want to consider accessibility of their websites and how they might improve accessibility. Some groups have created guidelines and checklists that organizations may use as a resource to evaluate and improve the accessibility of their websites for persons with disabilities. For example, the World Wide Web Consortium (W3C) has created Web Content Accessibility Guidelines founded on four basic principles for making websites perceivable, operable, understandable, and robust. The Guidelines include recommendations on such matters as providing text alternatives for non-text content, giving users enough time to read and use content, helping users avoid and correct mistakes, and maximizing compatibility with current and future user tools. W3C also lists several available tools for evaluating the accessibility of websites: <http://www.w3.org/WAI/ER/tools/complete.html>.

If you have any questions regarding this newsletter, or would like a review of your website and/or accessibility policies or practices, please contact Lisa Stegink (312-929-1966 or lstegink@clpchicago.com) or [any CLP attorney](#).

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